

**No.10- COURT'S ORDER WHETHER THE CASE IS OR IS
NOT APPROVED FOR REPORTING**

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Criminal Appeal No. 718 of 2001 (Old No. 1958 of 1984)

Guru Charan Singh
Versus
State of Uttar Pradesh

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

(Irshad Hussain J.)

Date: August 30, 2005

Initials of Judge.

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 718 of 2001
Old No. Criminal Appeal No. 1958 of 1984

Guru Charan Singh S/O Kundan Singh
R/O village Amiyawala, Police Station Jaspur,
District Nainital.

...Appellant

Versus

State of Uttar Pradesh.

...Respondent.

**Sri Dharamveer Sharma, Senior Adv. assisted by Sri Jitendra Chaudhary, Adv.,
learned counsel for the appellant-accused
Sri Amit Bhatt, Learned A.G.A. for the respondent-State.**

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Dated August 30, 2005

(Per Hon'ble B.S.Verma, J.)

This Criminal Appeal under Section 374 of the Cr.P.C. is directed against the judgment and order of conviction, dated 19-7-1984 passed by then II Additional Sessions Judge, Nainital, in Sessions Trial No. 149 of 1983, Stated of U.P. Vs. Guru Charan Singh, whereby the accused-appellant was found guilty of the offence punishable under Section 302 of the Indian Penal Code and was accordingly convicted and sentenced to life imprisonment.

2- Brief facts of the case emerging from the record are that on the fateful day, i.e. 25-11-1980, at about 1-30 p.m. there was an agitation by the farmers for increasing the price of sugar-cane and in that connection, the elected Directors of Nadehi Sugar Mil had given a call to the farmers to go on strike till the rates of sugarcane were enhanced. The reporter Shankar Singh, Harswarup Singh Sarpanch, Karan Singh Advocate, Babu Singh, Director Sugar Mill, Nanhe Singh ex-Director, along with some farmers were standing on the Kachcha road towards north of the

Pucca road as well as towards the west of the culvert of the water channel situate before Lok Vastra Unit Haripura so as to make the farmers understand not to bring their sugarcane to the sugar-mill till their demands were accepted. At about 1.30 p.m. accused Guru Charan Singh, son of Kundan Singh came by his Ford Tractor with the sugarcane loaded on the trolley towards the Nadehi Sugar Mill. Karan Singh Advocate, tried to stop the tractor by raising his hand. It was alleged that the accused furiously said “*Hartal Nahi Hogi*” and continued to drive his tractor, the left wheel of which ran over Karan Singh, who fell down. The trolley of the tractor also dashed Harswarup Singh who fell into a water-pit and the trolley as well as the tractors also fell into the water with force and the loaded trolley turned over Harswarup Singh. The witnesses present on the spot brought Karan Singh and Harswarup injured to the hospital, where they were declared dead. According to the written report (Ext.I) the accused-appellant constituted a fictitious farmers’ union in collusion with the General Manager of the Sugar Mill and some other persons. About four or five days prior to the occurrence, the accused was canvassing that the farmers should not resort to strike. On 24.11.1980, a meeting was held at the Sugar Mill Gate and the accused was shouting that he had no fear of blood-shed and he would not allow the strike to succeed at any cost. The accused, therefore, in order that the strike may fail caused death of Karan Singh and Harswarup Singh by intentionally driving his tractor at a high speed and then dashing it and trolley against these victims.

3- The Check F.I.R. Ext. Ka-5 was prepared and the case was registered under Section 302/109 of the I.P.C. and an entry to that effect was made in the General Diary vide Ext. Ka-6 at Crime No. 264. The investigation of the case was entrusted to S.O. Balbeer Singh, who proceeded to the hospital immediately accompanied by S.I. H.S.Bhakuni and started investigation. The dead bodies of the two victims were lying there. The inquest proceedings were held in presence of Panchas vide Ext. Ka-1 and Ka-2, relating to dead body of Harswarup Singh and Karan Singh respectively. The dead bodies

were sealed and went sent for post mortem to Civil Hospital, Kashipur, through Constables Virendra Singh and Ranbir Singh along with necessary papers including letter of request for post mortem, which are Exts. Ka-11 to Ka-18, prepared by S.I. H.S. Bhakuni on the dictation of the Investigating Officer at the Jaspur Hospital. The clothes of deceased Karan Singh were also taken into custody vide Ext. Ka-10. The I.O. accompanied by other police personnel proceeded towards the place of occurrence. The Investigating Officer was informed that accused Guru Charan Singh had gone towards Thakurdwara bus station in order to make his escape possible. On this information, the I.O. proceeded to the said bus stand to arrest the accused. The accused was found there at 6.45 p.m. He was arrested and brought to the police station by S.I. Garbyal and Constable Awal Singh. The I.O. then proceeded to the hospital and directed S.I. Garbyal to reach hospital after lodging the accused in the Hawalat of the police station. There the I.O. recorded the statements of witnesses including Shyam Singh, Babu Singh and Shankar Singh.

4- On 26-11.1990 at about 6.30 a.m., the Investigating Officer inspected the spot in presence of the witnesses and prepared the site plan, Ext. Ka-7. The statements of other witnesses were also recorded by the Investigating Officer. During the course of investigation, the tractor UTF-6339 belonging to the accused was also subjected to technical examination by the police expert and on 5.12.1980, the tractor and trolley in question were given in the Supurdgi of Swaran Singh, s/o Kundan Singh vide Ext. Ka-8, which was prepared by S.I. M.P.Tamta. The photographs (Ext. IV to Ext.XI) of the spot were taken by the Investigating Officer.

5. The autopsy on the dead body of Karan Singh deceased was conducted by PW 5, Dr. M.Hussain, on 26.11.1980 at 8.30 a.m. at the Civil Hospital Kashipur, and the following ante mortem injuries were found on the person of the deceased.

1. Abrasion 1" x 1" on the back of left elbow.
 2. Abrasion 1" x ½" on the back of left hand.
 3. Abrasion 2" x ½" on the back of left hip.
 4. Contusion 10" x 4" on abdomen left side starting from left iliac fossa to enuinal area and left pubic area, left upper ramus of public bone was found fractured, external iliac artery ruptured and sigmoid colon on the left iliac fossa was ruptured.
 5. Abrasion 1" x ½" "on middle of left leg in front.
 6. Abraded contusion 11" x 2" on right side back of the wrist.
 7. Abrasion 1" x 1" on right hip.
 8. Abrasion 2" x 1" on back and outer part back of chest over right 7 to 8 ribs.
- The doctor also found left lower ribs 8th to 10th fractured.

In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of excessive bleeding from the ante mortem injuries, which were sufficient in ordinary course of nature to cause death. The doctor also opinioned that death was possible at 1.30 p.m. on 25.11.1980. The Post Mortem report Ext. Ka-3 is on record.

6- Autopsy on the dead body deceased Harswarup Singh was also conducted on the same day at 10-30 a.m. and the following ante mortem injuries were found on the person of the deceased vide Ext. Ka-4:

1. Abraded contusion 2" x 1" on the top of head.
 2. Abrasion 1" x ½" "on the right side of head, 2" above right eye-brow.
 3. Abrasion ½" x ½" "on right temple.
- Left and 6th to 10th ribs were found fractured. Pleural cavity on left containing about ½ pint blood was found. Left lung was found lacerated in the lower part.

In the opinion of the doctor, the death was caused due to fracture of ribs, shock and bleeding from the ante mortem injuries. The death could have been caused at about 1.30 p.m. on 25.11.1980.

5- After completing necessary formalities, the charge-sheet, Ext. Ka-9 was submitted against the accused on 26.2.1981 to the court of Magistrate.

6- Since the offence charge was exclusively triable by the Court of Sessions, therefore, the case of the accused was committed

to the Court of Session. On 27.9.1983, a charge under Section 302 of the I.P.C. was framed against the accused by the learned Additional Sessions Judge.

7- The prosecution, in order to bring home the guilt to the accused, examined, in oral evidence, as many as eight witnesses in all. P.W.1 Shyam Singh is the reporter and an eye witness of the occurrence. P.W.2, Babu Singh, one of Directors of the Sugar Mill, is also an eye-witness. P.W.3, Gulam Sabir, is the witness and Panch of inquest proceeding. P.W.4, Nanhe Singh, is also one of the eye witnesses of the occurrence. P.W. 5, Dr. M.Hussain, the then Medical Officer of Civil Hospital, Kashipur, who conducted the post mortem of the dead bodies of the deceased Karan Singh and Harswarup Singh on 26.11.1980. P.W. 6, S.O. Balbeer Singh is the Investigating Officer. P.W.7, S.I. Kunwar Singh Negi, conducted technical examination of the tractor No. UTF-6339 belonging to the accused and P.W.8, Constable Vijaipal Singh was deputed to take care of the said tractor at the relevant time. In documentary evidence, the prosecution filed 19 documents, i.e. Ext. Ka-1 to Ka-19. Prosecution also produced in evidence Material Exhibits, namely, written report, Ext. I, Pamphlet, Ext.II, Newspapers, Ext. III and photographs Ext. IV to Ext. XI. It may be mentioned that the learned counsel for the accused admitted the genuineness of prosecution documents, which are marked as Ext. Ka-1, Ka-2 and Ka-10 to Ka-18, therefore, these documents were not required to be proved by oral evidence under Section 58 of the Evidence Act.

8- The accused in his statement, under Section 313 Cr.P.C., denied the accusations levelled against him and stated that at the relevant time some of the farmers were trying to resort to strike for enhancing the price of sugarcane. He also stated that nearly 50 persons were resisting in the carriage of sugarcane to the Mill, but they did not include the witnesses. The accused further stated that he was not taking sugarcane to the Mill, but his driver and his uncle Darshan Singh was going on his tractor with sugarcane. In reply to

the last question, the accused alleged his false implication in the crime on account of the fact that the tractor belonged him, which was being driven by this driver Gurnam Singh and his uncle was sitting thereon. He further stated that his driver and uncle informed him of the incident that when his driver and uncle along with the tractor reached near the spot, the crowd was trying to resist the people from bringing sugarcane to the Mil. They were also resisted. In the process, one person tried to hold the steering with the result he was hit by the tractor and slipped down. Driver Gurnam Singh, in order to save him, swerved the tractor towards right side with the result he lost control over the tractor, which slipped into the water and the trolley overturned. The accused further stated that he was told that one person also got injured due to overturning of the trolley. According to him, the driver of the accused was not at fault.

9- The learned Additional Sessions Judge after hearing both the parties and considering the evidence on record came to the conclusion that the prosecution was successful in bringing home the guilt to the accused for the offence punishable under Section 302 I.P.C. He accordingly convicted and sentenced the accused as aforesaid.

10- We have heard learned counsel for both the parties and have carefully examined the evidence on record.

11- Learned counsel for the appellant, in support of the appeal, vehemently submitted that the accused-appellant was wrongly held responsible for the murder of two persons- deceased Karan Singh and Harswarup Singh. According to the learned counsel neither there was any intention for the accused to commit murder of the said persons, nor the prosecution has set up any motive, whatsoever, on that score which is even not borne out from the evidence of the prosecution witnesses. It was further submitted that even if it may be presumed the accused-appellant could only be responsible for rash and negligent act, the prosecution failed to

establish type marks having been present on the unclothed parts or even clothed parts, if the clothes were not thick, of the bodies of the two deceased, because according to the prosecution the deceased were crushed under the wheel of the tractor, which is a heavy vehicle. It was therefore vehemently submitted that the medical evidence on record did not at all support the prosecution version on this point and even no case under Section 304-A of the I.P.C. is made out against the accused-appellant. On the other hand, the learned A.G.A. while supporting the impugned judgment submitted that the motive behind the crime was established by the prosecution in the written report (Ext.I) itself, which was sufficient to indicate the intention of the accused-appellant for committing murder. He also urged that the finding recorded by the trial court were based on the inferences drawn after proper appraisal of the evidence of the prosecution.

12- At the outset, the admitted facts of the case are necessary to be mentioned herein for just decision of the appeal. We shall discuss the evidence of the witnesses in the later part of the judgment. Having considered the entire evidence on record, it comes out that there was neither any enmity between the eye witnesses produced by the prosecution, nor the eye witnesses are in any way related to the deceased persons, It is significant to mention here that even in his statement, recorded under Section 313 Cr.P.C., the accused-appellant clearly stated that he was told about the occurrence by his driver and uncle that a crowd had assembled on the spot, who were obstructing the persons not supply sugarcane to the Nadehi Sugar Mil till their demands for increase of price are accepted by the Government. According to the accused one person from the crowd tried to catch hold of the steering of the tractor-trolley, who in that process slipped and hit against the tractor and the driver Gurnam Singh, in order to save him, swerved the tractor towards right side, with the result the driver lost control over the steering and the tractor got into the water and turned over. The accused was also informed that another person also suffered injuries

due to overturning of the tractor. An important aspect of the statement under Section 313 Cr.P.C. is that the accused did not utter a single word as to where he remained on the fateful day leaving his tractor on the mercy of his driver and uncle. In reply to question no.2, the accused clearly admitted that a crowd of as many as 50 persons was present on the spot, who were obstructing the farmers taking sugarcane to the Sugar Mil. Moreover, the accused alleged enmity with the eye-witnesses of the occurrence, but he did assign any reason for enmity. In this view of the matter, we are not inclined to accept the version of the accused as stated in his statement that the eye witnesses had any enmity against him and that he was not present on the spot. An innocent person, charged with the commission of murder, would not conceal his presence when he himself has admitted the accidental death or injury on the body of two person on the date, time and place. Thus, we hold that the accused was very much present with his tractor on the spot and in fact was driving it at the time of the incident. The date, time and place as alleged by the prosecution are not in question. With these back-ground, it has to be examine whether the prosecution succeeded in bringing home the guilt against the accused for the offence of murder or whether any offence is made out against the accused or not.

13- Before dealing with the prosecution evidence, it is relevant to note that during the pendency of the present appeal, learned counsel for the appellant moved an application under Section 391(1) of the Cr.P.C., whereby copies of statements of Babu Singh (PW 2) and that of Shyam Singh (PW 3), the reporter and eye witness of the occurrence were sought to be filed as evidence. These statements were recorded by the Motor Accident Claims Tribunal in M.A.C. Petition No. 41 of 1981, Smt. Dharmawati and others Vs. Gurcharan Singh. In that case, claim for compensation under the Motor Vehicles Act arising out the motor accident, which occurred on 25.11.1980, was preferred by the L.Rs./dependents of the deceased Karan Singh. The application was allowed by order dated

28-6-2005 and the additional evidence was taken on record. The relevant portions of these statements shall be referred to herein as and when necessary.

14- P.W.1 Shyam Singh, in his testimony before the trial court, stated that the accused Gurucharan Singh is known to him from before. The accused supplies sugarcane to Nadehi Sugar Mills. Witnesses Babu Singh and Shankar Singh are the elected Directors of the said Mill. Deceased Karan Singh and Nanhe Singh were the Ex-Directors of the Mill. Harswarup Singh (deceased) was the Sarpanch of the area and he held the office of Chairman of the Jaspur Co-operative Marketing Committee as well as a farmer. He used to supply sugarcane to the said Mill. According to this witness, the present and ex-directors appealed to the farmers to go on strike and abstain from supplying sugarcane to the Sugar Mills until their demand to enhance the price was accepted by the Government. The accused was against the strike as he was in collusion with Mr. Pande, The General Manager of the Mill and Sri Tripathi, Chief Sugarcane Inspector and in order to defeat the strike he was canvassing among the farmers from village to village on a Jeep fitted with loud speaker. A meeting was also held at the factory gate on 24-11-1980 which was addressed by the accused in a harsh tone saying that he would defeat the strike at any cost. In this way, an attempt has been made by the prosecution to set up the motive for commission of crime by the accused. Regarding actual occurrence, PW 1 stated that on 25.11.80, he along with other persons including the deceased and witnesses had gone near the culvert of channel. At about 1.30 p.m., the accused came there on his tractor-trolley loaded with sugarcane to be supplied to the Sugar Mill. Harswarup Singh was standing behind Karan Singh at north-western side. Karan Singh raised hand to stop the vehicle. On this accused furiously shouted that there will be no strike. Saying this, in order to kill them, he steered the tractor towards right side with the result the left wheel of the tractor crushed Karan Singh, who fell down and the trolley hit Harswarup Singh with the result he sustained jerk and fell into the water and the trolley

overturned in the water over his body. Accused then escaped from the scene of occurrence. According to P.W.1, when the tractor ran over these two persons, they withdrew themselves. This is all about the actual occurrence. From the narration of the statement of P.W.1, it is evident that there was a mob of about 50 persons on the spot, when the accused was taking sugarcane on his tractor-trolley for being supplied to the sugar mill. In the circumstances when the tractor-trolley was loaded with sugarcane and there was a mob of large number of people on the spot, it cannot be safely accepted that the accused-appellant was intending to commit the murder of any person. Moreover, even if it may be taken for the sake of argument that the intention of the accused was to kill the agitators supporting the strike, then the accused would have driven the tractor into the crowd of persons to be run over under the tractor. But it is not the case of the prosecution. It cannot be imagined by reason or prudence that where there is a crowd of agitators, a driver of the loaded tractor trolley could have clear intention to commit murder of any particular person and that too near culvert of water-channel where the road was quite narrow. P.W.1 was cross-examined at length. In the cross-examination, he clearly admitted that the accused bore no personal grudge against the deceased, five directors and the witness himself. He further admitted that Karan Singh fell down after having been hit by the tractor-trolley and then the trolley passed over his hip. This witness further stated that he did not see as to how the tractor trolley hit the deceased Harswarup Singh. He also admitted that the accused could not control the tractor, hence it got into the water.

15- The witness Shyam Singh also appeared as witness in the Motor Accident Claim Case referred to above as P.W.3. His statement was recorded on 4.10.1989. He stated that the accused was driving the tractor rashly and negligently at the relevant date. He further stated that Karan Singh raised his hand to stop the tractor from the left side of road while he was in the north, but the accused did not stop the tractor and turned the same towards right side and crushed said Karan Singh by the left wheel of the tractor with the

result Harswarup Singh who was standing in the middle got hit by it and he also fell down sustaining injuries. Both Karan Singh and Harswarup Singh suffered injuries. In this statement, this witness did not utter a single word that the intention of the accused-appellant was to commit murders.

16- Another eye witness examined by the prosecution is P.W.2 Babu Singh. He stated that a strike was going on for enhancement of the price of sugarcane for which pamphlets were distributed. Regarding actual occurrence, this witness stated that at about 1.30 p.m. on the fateful day, the accused came on his tractor trolley loaded with sugarcane on the spot. Karan Singh (deceased) tried to stop the tractor and raised his hand. Gurucharan Singh shouted there will be no strike and steered the tractor towards the witness, Karan Singh and Harswaruup Singh with the result the left front wheel of the tractor run over Karan Singh whereas Harswarup Singh was hit by the trolley and fell into the water. The trolley also overturned over him. PW 2 nowhere stated that the intention of the accused was to kill these persons or the others among the mob agitating there for the enhancement of cane price. In the cross-examination, this witness admitted that the culvert of water channel was narrow. He also sated that the accused had retarded the speed of the tractor near the culvert. He also stated that about 2-3 paces before the culvert, the accused shouted that there will be no strike. In appeal, the appellant filed copy of statement of this witness given before the Motor Accident Claims Tribunal Nainital in M.A. Claim Petition No. 41 of 1981. As P.W.2, this witness stated that on 25.11.1980, Karan Singh died as a result of rash and negligent driving of the tractor by accused Guruchan Singh. He stated that Karan Singh died as a result of negligent act on the part of the accused. We have already found earlier that although the prosecution by examining P.W.1 Shyam Singh, the reporter, of the case has tried to set up the motive for the accused to commit murder, but at the same time it is significant to note that the prosecution failed to produce the original written report lodged by the P.W.1 on

record. As detailed above, it has come in the evidence that the accused was carrying sugarcane to be supplied to Nadehi Sugar Mill at the relevant time when there was resentment amongst the farmers and a strike was called by the present and Ex-Director of the Sugar Factory for raising the price of the sugarcane by the Government. It is apparent that the accused while carrying the sugarcane on his tractor trolley came across the mob of people who were supporting the strike. The deceased Karan Singh gave hand as a signal to stop the tractor near the culvert of the water-channel.

17- Another eye witness is P.W.4, Nanhe Singh, Regarding actual occurrence, this witness in para 1 of his statement stated that at the relevant time, the accused came on his tractor trolley loaded with sugarcane. When he came near the witnesses present on spot, Karan Singh raised hand so that the tractor may be stopped. Accused told that there will be no strike. He did not stop the vehicle and steered it towards north with the result the front left wheel crushed Karan Singh and Harswarup was dashed against the trolley and thrown into the water. Tractor and trolley against the trolley and thrown into the water. Tractor and trolley also entered the water-pit and the trolley overturned over Harswarup Singh. The accused then ran away from the scene of occurrence. This witness too has not set up any motive or intention of the accused to commit murder. P.W.4 in his cross-examination stated that he witnessed the entire occurrence. He stated that he could not see as to which part of the body of Harswarup Singh struck against the trolley. He also saw Harswarup Singh falling into the water.

18- Now, we take up the medical evidence on record. Admittedly, the post mortem of the dead bodies of Karan Singh and Harswarup Singh was conducted in Civil Hospital, Kashipur, by Dr. M.Hussain, P.W.5, on 26.11.1980. The autopsy on the body of Karan Singh was conducted at 8-30 a.m. Post Mortem Report in respect thereof is Ext. Ka-3, which is detailed earlier. This witness in para no. 4 of his statement clearly stated that Karan Singh died as

a result of ante mortem injuries sustained by the deceased. He in unequivocal terms stated that the fractures and ruptures found on the person of the deceased could have been caused due to strike against the wheel of the tractor and they could not be caused by crushing of the person under the wheel of the tractor in ordinary course. He stated that in case there was muddy-water (*Keechar*), then the injuries were possible. Regarding the ante mortem injuries on the person of Harswarup Singh, PW5 opined that if the person is run over by a tractor trolley loaded with sugarcane, the body of the injured will be crushed in the ordinary course. The witness opined that the death of both deceased person was possible at about 1.30 p.m. on 25.11.1980.

19- Run-over injuries have been described in the Modi's Medical Jurisprudence and Toxicology 29th Edition, Pages 372-373. It is mentioned therein that "if the wheel of a heavy vehicles passes over the head, trunk or extremity, that part is crushed. Tyre marks may be present on the unclothed parts or even clothed parts, if the clothes are not thick. The grease and oil stains from the undercarriage will be present on the clothing and wound. And the hot exhaust pipe under the vehicle may cause burns. If the wheel moves over the trunk, rupture of viscera may occur, and if it moves over a fleshy part, an avulsion injury may result with extensive degloving of wide area, usually of the thigh."

20- The manner of investigation by the Investigating Officer is also relevant for the just decision of this case. The Investigating Officer Balbeer Singh, S.O., is P.W.6. A suggestion was given to him that he draft the written report in the basis of which Check report was prepared. He however denied the suggestion. It may be mentioned that the prosecution has not filed the original written report on record. He further stated that he arrested the accused straight away because he examined the matter in cursory manner. He also admitted that he found the facts of the

F.I.R. to be true and he did not record statement of any witness before arrest of the accused. Learned counsel for the appellant also rightly pointed out that the prosecution itself took it as a case of a motor vehicle accident and this was the reason that in the inquest report of Har Swarup Singh (Ext. Ka-1) and inquest report of Karan Singh (Ext. Ka-2), it got to be mentioned that the deaths were caused when run over by a tractor. In challan reports, Ext. Ka-11 and Ext. Ka-17 pertaining to these two victims also the cause of deaths were mentioned by the I.O. as the accident by tractor and in none of these challan reports reference of any F.I.R. for any offence of murder was also made. This, according to the learned counsel, was due to the fact that by the time the inquest were held on dead bodies, the F.I.R. was not in existence and probably the written report was subsequently changed to suit the prosecution version. For this reason, the original written report was thus not available on record and it was suppressed by the prosecution. Without expressing any opinion on this aspect of the matter, it cannot, however, be doubted that it was initially taken as a case of accident by tractor and to that extent the submission of the learned counsel for the appellant carry conviction to assail the prosecution claim.

21- From the above narration of the entire evidence led by the prosecution including the testimony of the eye witnesses, the medical evidence on record, it comes out that the death of deceased Karan Singh and Harswarup Singh occurred as a result of ante-mortem injuries sustained by them at about 1.30 p.m. on 25.11.1980. The prosecution succeeded in establishing this fact. The prosecution also succeeded in proving that accused while prosecution the culvert of the channel was rash and negligent in driving the tractor-trolley. It is established from the medical evidence that deceased Karan Singh as well as Harswarup Singh were not crushed under the tyre of the tractor. Therefore, we have no hesitation in holding that the accident occurred due to rash and negligent driving of the tractor by the accused-appellant Guru Charan Singh resulting into death of

Karan Singh and Harswarup Singh as they were dashed by the tractor. It is established on record that the dependent/legal representatives of the deceased Karan Singh preferred petition for compensation under the Motor Vehicles Act, 1988. The prosecution could not establish the intention of the accused to commit murder of any of the deceased.

22- In view of the discussion of the entire material on record including the evidence led by the appellant before this Court, we are of the considered view that it is difficult to hold that a case of murders by intentionally driving the tractor at a high speed and then crushing over the two deceased by the tractor and its trolley can be said to have been made out beyond reasonable doubt. In the aforesaid premises, we are of the considered view that the prosecution has failed to establish the offence under Section 302 I.P.C. We accordingly set aside the conviction of the appellant under Section 302 of the I.P.C. and sentence passed there-under and convict him under Section 304-A I.P.C. and sentence him to undergo R.I. for two years.

23- The appeal stands partly allowed accordingly.

24- Let the record of the case be transmitted to the trial court for compliance to be reported to this Court in two months.

(B.S. Verma, J.)

(Irshad Hussain, J.)